

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KARIM KIDD,

Defendant and Appellant.

B266890

(Los Angeles County  
Super. Ct. No. VA137881)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Patrick T. Meyers, Judge. Affirmed.

Cynthia Grimm, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

---

A Macy's security guard detained Karim Kidd after watching him leave the department store on December 15, 2014 without paying for 19 polo shirts concealed inside a black plastic bag. Kidd was charged with one count of grand theft of personal property exceeding \$950 in violation of Penal Code section 487, subdivision (a).<sup>1</sup> The information specially alleged that Kidd had suffered one prior serious or violent felony conviction for robbery, in Orange County Superior Court (O.C.S.C.) case number 08HF1560, within the meaning of the Three Strikes law (§§ 667, subds. (b)-(j), 1170.12) and had served six separate prison terms for felonies (§ 667.5, subd. (b)). Kidd pleaded not guilty and denied the special allegations.

The trial court granted Kidd's motions to represent himself (*Faretta v. California* (1975) 422 U.S. 806, 835-836 [95 S.Ct. 2525, 45 L.Ed.2d 562]) and for standby counsel. The court denied Kidd's oral and written motions to reduce the charged offense to a misdemeanor (§ 17, subd. (b)). The court also denied Kidd's motion to compel discovery of Macy's personnel records.

Shortly before trial, Kidd moved to dismiss his prior strike conviction for robbery in O.C.S.C. case number 08HF1560, arguing because the trial court had stayed punishment for that offense under section 654, it could not be used to enhance his sentence in this case. Alternatively, Kidd argued the prior strike conviction should be dismissed pursuant to section 1385. The court told Kidd his first motion was premature and should be brought at sentencing. The court then denied the motion to dismiss the prior strike conviction under section 1385 on grounds the 2009 conviction was recent and Kidd had a lengthy criminal record.

Before jury trial commenced, the trial court granted Kidd's request to relinquish his right to represent himself and appointed standby counsel to represent him. After the jury convicted him as charged, Kidd waived his right to a jury trial on the prior conviction allegations. Following a bench trial, the court found Kidd had suffered a prior

---

<sup>1</sup> Statutory references are to the Penal Code, unless otherwise indicated.

conviction for purposes of the Three Strikes law and dismissed the remaining special allegations on the prosecutor's motion. The court sentenced Kidd to a four-year state prison term (the two-year middle term doubled under the Three Strikes law) for grand theft of personal property. Kidd filed a timely notice of appeal.

### **DISCUSSION**

We appointed counsel to represent Kidd on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On April 15, 2016, we advised Kidd he had 30 days within which to personally submit any contentions or issues he wished us to consider. We received hand-printed documents on April 27, May 11, and May 17, 2016. Together they comprised Kidd's supplemental brief. Attached to the May 17, 2016 documents were minutes of post-sentencing proceedings in O.C.S.C. case number 08HF1560 and a copy of an opinion by Division Three of the Fourth District Court of Appeal concerning a petition for writ of habeas corpus Kidd filed in that case (*In re Kidd* (Jan. 25, 2012, G045736) [nonpub. opn.]).<sup>2</sup>

Kidd's contentions on appeal appear to be: (1) the trial court in O.C.S.C. case number 08HF1560 miscalculated Kidd's presentence custody credits when it sentenced him in 2009; and (2) the trial court in the current case improperly sentenced Kidd as a second strike offender based on his robbery conviction in O.C.S.C. 08HF1560 for which sentencing had been stayed.

Kidd's challenge to his presentence custody credits awarded in O.C.S.C. case number 08HF1560 is not cognizable on appeal in this court. As for his second contention, Kidd was convicted in O.C.S.C. 08HF1560 of robbery, second degree burglary and petty theft with a prior theft-related conviction, of which only robbery qualified as a potential strike in future criminal proceedings. The trial court sentenced Kidd to three-year concurrent terms for all three convictions.

Thereafter, Division Three of the Fourth District Court of Appeal granted Kidd's petition for writ of habeas corpus and ordered the Orange County Superior Court to stay

---

<sup>2</sup> We take judicial notice of the unpublished opinion. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

the robbery sentence pursuant to section 654. Kidd argues that in light of this decision, the robbery conviction could no longer be considered a prior strike for purposes of sentencing. However, the mere fact that a conviction was stayed under section 654 in an earlier proceeding does not in itself preclude use of the conviction as a strike pursuant to the Three Strikes law in a later proceeding. (*People v. Benson* (1998) 18 Cal.4th 24, 31, 36 & fn. 8;) (compare *People v. Vargas* (2014) 59 Cal.4th 635 [two prior convictions arising out of a single act against a single victim cannot constitute two strikes under the Three Strikes law; robbery and carjacking].) Based on the single strike conviction in the prior proceeding, Kidd was properly sentenced in this case as a second strike offender.

We have examined the entire record and are satisfied Kidd's appellate attorney has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

### **DISPOSITION**

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.